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GEORGE BASYE

July 10, 1998

Greg Young  
Calfed  
1416 9<sup>th</sup> Street, Room 142  
Sacramento, CA 95814

Re: Water Transfer Work Group

Dear Greg:

The BDAC Water Transfer Work Group materials need to include reference to the issue regarding the transfer of conserved water. Issue 1, under Section 4.2 of your recent draft is really two issues: "real water" and "no injury". This letter is about "real water."

Our office represents a number of districts and water companies on the Sacramento River which have undertaken the conservation of their agricultural water supplies rather extensively for the last 20 years or so. This conservation of water was, of course, encouraged by the legislature, which recognized that if a water user, by conserving water, would lose a portion of its right, the conservation efforts would be severely discouraged.

In order to encourage water conservation, Section 1011 of the Water Code was added in 1979, becoming effective September 28, 1979. That section recognizes that conserved water is deemed equivalent to a reasonable beneficial use of the water, to the extent of the cessation or reduction in use as a result of the conservation practice, and no forfeiture of the appropriate right would result.

Subsection (b) of Water Code Section 1011 was added in 1982, which specifically recognized that water conserved under subdivision (a) may be transferred.

To recognize the legislative intent under Section 1011, it would be appropriate to recognize that water conserved subsequent to the adoption of Section 1011 in 1979 should be available for transfer as a result of such conservation efforts. At the very least, however, the intent of the legislature would certainly recognize the right to transfer water conserved subsequent to the effective date of the 1982 amendment, which would be January 1, 1983.

The outline of the Water Transfer Work Group contains a number of references to the concept of "real water". If "real water" is limited to water which would have been used by the transferor in the year of transfer, but for the transfer, then Section 1011 of the Water Code would be completely ignored. This would be contrary to the clear intent of the legislature.

The Department of Water Resources and the Bureau of Reclamation are reluctant to recognize conserved water as transferable, because any water which was previously conserved, is physically available to the projects. By refusing to recognize the transferability of conserved water, therefore, the projects simply get the benefit of that water and the agency proposing to transfer the conserved water is deprived of the benefit which the legislature obviously intended under Section 1011.

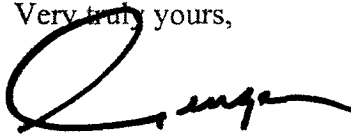
Recent negotiations regarding transfers of conserved water have indicated that the Bureau and the Department might recognize that water conserved after some arbitrary date, such as five years prior to the year of transfer, could be recognized as being transferable. There is no justification for such limitation under the legislative enactment short of at least January 1, 1983.

We have clients who would assert that conservation efforts taken as much as 20 or 30 years ago should also be recognized as being available for transfer. That may be more arguable, but it would seem clear that the intent of the legislature in adopting Section 1011 and particularly Section 1011(b) intended to encourage and allow the transfer of water conserved subsequent to the adoption of those provisions.

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This issue should be identified in the Transfer Work Group documents. It would be inappropriate to ask for the Work Group to decide this issue either for the transferors or for the project operators, but the concern raised certainly needs to be identified.

Very truly yours,

A handwritten signature in black ink, appearing to read "George Basye", with a large, stylized initial "G".

GEORGE BASYE

GB:slp

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cc: Mike Heaton

DOWNEY BRAND SEYMOUR & ROHWER LLP

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